

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE

IN RE)	
)	NO. 3-83-00372
SOUTHERN INDUSTRIAL BANKING)	
CORPORATION)	
)	Chapter 11
Debtor)	
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THOMAS E. DuVOISIN, Liquidating)	
Trustee)	
)	
Plaintiff)	
)	
v.)	ADV. NO. 92-3194
)	
JAMES C. JONES)	
)	
Defendant)	

M E M O R A N D U M

This adversary proceeding came before the court upon the plaintiff's complaint to recover a preferential transfer under the provisions of § 550 of the Bankruptcy Code. Having considered the evidence and the arguments of the parties, the court now makes its findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

I.

On December 23, 1991, the plaintiff was awarded a judgment against Judy Jones, the defendant's former wife, in the amount of \$22,489.21 plus prejudgment interest. That judgment was awarded against Ms. Jones because she received a preferential transfer when

she cashed her investment certificate and withdrew \$22,489.21 from Southern Industrial Banking Corporation (SIBC) within ninety days of SIBC's bankruptcy filing.

The SIBC investment certificate had been given to Ms. Jones by the defendant, her husband at the time. The investment certificate was in the name of Judy Starnes Jones in the face amount of \$22,000 and belonged solely to her.

On or about February 18, 1983, Ms. Jones withdrew her moneys totaling \$22,489.21 represented by the investment certificate plus accrued interest from SIBC and deposited the moneys in her checking account at City and County Bank of Hawkins County, Tennessee ("C & C Bank"). The checking account was in her name only.

Subsequently, on or about March 18, 1983, Ms. Jones withdrew in cash \$22,638.93 from her C & C Bank account, which included the SIBC funds she had deposited, and traveled with the defendant to Greeneville, Tennessee, where she gave the cash to Randy Tackett in return for certain real estate upon which was located a small tavern or bar known as the "Baileyton Country Club." The warranty deed for the real estate listed Judy Jones as the grantee of the property.

Thereafter, Ms. Jones and the defendant operated the bar for a period of time. Both worked at the bar and revenue generated from this business was used by Ms. Jones and the defendant to help pay their living expenses. In several documents executed in the

course of operating the bar, the defendant represented he had had an ownership interest in the business, although at trial he denied he had held any interest in the property.

On May 17, 1985, Ms. Jones and the defendant divorced. The divorce decree stated that Ms. Jones "shall be the sole owner of . . . `Baileyton Country Club'."

Later in 1985 Ms. Jones sold the Baileyton Country Club. In deposition testimony given before the trial, Ms. Jones testified the defendant received some of the proceeds from the sale of the property. At trial, however, she testified that she alone received the balance of the proceeds from the sale. The defendant denied receiving any of the sale proceeds. Ms. Jones was not a credible witness since she changed her testimony several times. The proof simply failed to establish the defendant received any proceeds from the sale.

II.

Although the plaintiff has obtained a judgment against Ms. Jones for the preferential transfer represented by her SIBC investment certificate, the plaintiff seeks to recover from the defendant the value of that transfer under the provisions of § 550. Section § 550 reads in pertinent part as follows:

Liability of transferee of avoided transfer

(a) Except as otherwise provided in this section, to the extent that a transfer is

avoided under section . . . 547 . . . of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--

- (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
- (2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section (a)(2) of this section from--

- (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
- (2) any immediate or mediate good faith transferee of such transferee.

11 U.S.C. § 550(a)(1)(2), (b)(1)(2).

The evidence established that Judy Jones was the initial transferee of the preferential transfer from SIBC within the meaning of § 550(a). The defendant was not an initial transferee of the SIBC funds nor was he an entity for whose benefit the transfer was made. "A reading of subsection (a)(1) in conjunction with the remainder of section 550 leads to the conclusion that the phrase 'or the entity for whose benefit such transfer was made' refers to those who receive a benefit as a result of the initial transfer from the debtor - not as the result of a subsequent transfer." *Danning v. Miller (In re Bullion Reserve)*, 922 F.2d 544, 547 (9th Cir. 1991), quoting *Merrill v. Dietz (In re Universal Clearing House Co.)*, 62 B.R. 118, 128 n. 12 (D. Utah 1986). The funds with-

drawn from SIBC by Judy Jones were funds that belonged to her. Her initial withdrawal of funds from SIBC did not confer a benefit on the defendant.

Later, Judy Jones took her SIBC funds which had been deposited in her checking account at C & C Bank and transferred them to Randy Tackett to purchase Baileyton Country Club. Because the moneys were never transferred to the defendant, he was never an immediate or mediate transferee of the preferential transfer within the meaning of § 550(a)(2). Even if the defendant had been given partial interest in the property purchased from Tackett, he never became an immediate or mediate transferee of the funds withdrawn preferentially from SIBC. If anyone could be characterized as the immediate or mediate transferee of the preference, it would be Tackett. Of course, Tackett who gave value for the funds would be entitled to claim the defense provided in § 550(b)(1).

Because the plaintiff would not be entitled to recover from the defendant under the provisions of § 550(a), an order will enter dismissing the plaintiff's complaint.

JOHN C. COOK
United States Bankruptcy Judge